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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JAN NUSBAUM, Plaintiff, v. E-LO SPORTSWEAR LLC, Defendant.	**COMPLAINT** **Demand for Trial by Jury**

NATURE OF THE ACTION

1. Plaintiff Jan Nusbaum ("Ms. Nusbaum") brings this action against Defendant E-Lo Sportswear LLC ("E-Lo" or "the Company") for violating Title VII of the Civil Rights Act of 1964 and the New York City Human Rights Law, N.Y.C. Admin. Code §§ 8-101 et seq. (the "NYCHRL"), and breach of contract.

2. E-Lo, a clothing manufacturing and distribution company based in New York, hired Ms. Nusbaum in March 2015 as the President of the Nanette Lepore clothing line. Ms. Nusbaum was a dedicated employee with a strong performance record. Ms. Nusbaum led the effort to develop and grow the Nanette line and secured deals with more than a dozen global retailers, including Bloomingdales.

3. During Ms. Nusbaum's employment with the Company, E-Lo subjected Ms.

Nusbaum to a work environment infested with sexually explicit language and sexually harassing behavior that was witnessed by, reported to, and condoned by David Lomita ("Mr. Lomita"), E-Lo's CEO and President, and owner. Despite repeated notice of the unlawful harassment, including reports by Ms. Nusbaum directly to Mr. Lomita, E-Lo and Mr. Lomita failed to take remedial measures. Rather, the Company retaliated against Ms. Nusbaum and terminated her employment shortly after she made protected complaints of sexual harassment.

JURISDICTION AND VENUE

4. This case arises, in part, under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et. seq.* ("Title VII").

5. Ms. Nusbaum filed a charge of sexual harassment and retaliation with the Equal Employment Opportunity Commission ("EEOC") on February 3, 2017. On or around April 25, 2017, the EEOC issued Ms. Nusbaum a Notice of Right to Sue. Therefore, this court has original jurisdiction of this matter pursuant to 28 U.S.C. § 1331.

6. The claims Ms. Nusbaum brings under the New York City Human Rights Law, N.Y.C. Admin. Code § 8-101 et seq. ("NYCHRL") and under New York contract law, arise out of the same incidents as the federal claims of discrimination and retaliation that are properly before this Court. Therefore, the court properly exercises pendent jurisdiction over the NYCHRL claims.

7. Venue lies in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions in this action occurred within the Southern District of New York.

PARTIES

Jan Nusbaum

8. Plaintiff, Jan Nusbaum, is a woman and was an employee of E-Lo Sportswear within the meaning of all applicable statutes.

9. Ms. Nusbaum graduated from the Fashion Institute of Technology with a degree in Fashion Buying and Merchandising.

10. Ms. Nusbaum is a business leader and marketing veteran in the fashion industry with decades of experience in launching and growing businesses, strengthening market presence, increasing market share and improving profitability for various clothing brands and retailers.

11. Ms. Nusbaum currently resides in New York, New York.

E-Lo Sportswear LLC

12. Defendant E-Lo Sportswear LLC is a New York corporation with its corporate headquarters within the City and County of New York at 500 Fashion Avenue, New York, NY 10018.

13. E-Lo manufactures and distributes sportswear and other textile products, and holds itself out to be a cutting edge fashion enterprise, which manufactures designs and markets clothing to a nationwide consumer base.

14. On information and belief, E-Lo is owned by Mr. Lomita, who is also the President and CEO of the Company.

15. During all relevant times, E-Lo was Ms. Nusbaum's employer within the meaning of all applicable statutes.

16. Upon information and belief, at all times pertinent hereto, E-Lo employed more than 15 people.

FACTUAL ALLEGATIONS

Ms. Nusbaum and E-Lo Enter into a Binding Employment Contract

17. Ms. Nusbaum joined E-Lo in March 2015 as the President of the Nanette Lepore brand, earning a base salary of $325,000 per year with significant metric-based bonus opportunities totaling up to 100% of her salary. During her employment, Ms. Nusbaum reported directly to Mr. Lomita.

18. At the time of hire, Ms. Nusbaum entered into a valid employment contract with E-Lo (the "Contract"), whereby the Company obligated itself in writing to, among other things, pay Ms. Nusbaum nine months of base salary as severance pay in the event of the termination of her employment.

19. The Contract was supported by adequate consideration, including Ms. Nusbaum's agreement to undertake employment with the Company.

20. Ms. Nusbaum relied on E-Lo's representations that it would pay her nine months of severance when she accepted the position with E-Lo.

21. Ms. Nusbaum performed pursuant to the Contract and led the effort to grow the Nanette Lepore brand into a competitor, securing deals with more than a dozen global retailers.

Defendant Subjected Ms. Nusbaum to a Hostile Work Environment

22. E-Lo perpetuated a male-dominated work culture in which the objectification of women and sexual harassment was condoned at the highest level of the Company.

23. Male supervisors and coworkers at E-Lo frequently demeaned, undermined, and sexually harassed women with impunity.

24. E-Lo subjected Ms. Nusbaum to a hostile work environment almost immediately

after her employment with E-Lo commenced.

25. John Correri, a senior manager, supervisor within the Company, and colleague of Ms. Nusbaum's who worked in close proximity to her, repeatedly directed offensive, profane, and demeaning language of a gendered nature at his female subordinate. For example, in front of Ms. Nusbaum and several other coworkers, and directly to the female employee's face, Mr. Correri called his female subordinate "a cunt" and "a piece of shit." He also exclaimed that she "needs to get fucked hard," and demanded that she "fucking go home" because he did not want to see "her fucking ugly face."

26. Ms. Nusbaum was deeply offended by this unwanted hostile and demeaning conduct, as was the woman who was the object of the attack.

27. In or around April or May 2015, Ms. Nusbaum was subjected to unwanted sexual advances by a male employee of E-Lo. On one occasion, the male employee cornered Ms. Nusbaum in the Company kitchen, told her she was "very attractive," and said he wanted to "go out" with her. He also bragged that "[he] was good in bed."

28. Ms. Nusbaum sternly rejected the male employee's unwelcome advances and immediately reported his conduct to Mr. Lomita and made a protected sexual harassment complaint. Rather than assuring Ms. Nusbaum that E-Lo would take steps to correct the male employee's behavior, Mr. Lomita dismissively laughed about Ms. Nusbaum's complaint and did nothing to address the harassment, signaling his and the Company's indifference to a hostile work environment.

29. These were not isolated incidents. Throughout Ms. Nusbaum's employment, Mr. Correri made sexually harassing comments and offensive gestures in front of her and other female employees. For example, he frequently told Ms. Nusbaum that "[she] needed to play with

[herself]" and "get laid," among other sexually explicit comments. Ms. Nusbaum continued to be offended by Mr. Correri's harassing and humiliating behavior.

30. Even though Mr. Correri's conduct was witnessed by Mr. Lomita and other high level managers, E-Lo and Mr. Lomita failed to take any remedial measures. Instead, Mr. Lomita and the Company continued to sanction a hostile work environment, and Mr. Correri's harassing behavior continued.

31. For example, upon information and belief, in or around April 2016, Mr. Correri again used sexually explicit language, along with offensive race-based comments, during a meeting with representatives of one of E-Lo's customers, Burlington Stores, Inc. ("Burlington").

32. Upon information and belief, some of the Burlington meeting participants reported Mr. Correri's offensive comments and the issue was escalated to Burlington's CEO, who then notified Mr. Lomita of Mr. Correri's conduct. Despite this further notice of Mr. Correri's unlawful behavior, the Company failed to impose any disciplinary measures to address Mr. Correri's past behavior or prevent continued harassment, and Mr. Correri continued to work on the Burlington account.

33. On October 3, 2016, Ms. Nusbaum went to Mr. Correri's office to request that he take Nanette Lepore brand sweater dresses to sell to the retailer, TJ Maxx, Inc. ("TJ Maxx"), on an upcoming business trip. Mr. Correri responded to Ms. Nusbaum by stating, "You should suck my dick if I sell them."

34. Mr. Correri and Ms. Nusbaum then walked into Mr. Lomita's office to discuss strategy for Mr. Correri's upcoming business trip. When Ms. Nusbaum brought up the sweater dresses, Mr. Correri repeated his sexually explicit comment in front of Mr. Lomita, stating again that "Jan should suck my dick if I sell them."

35. Ms. Nusbaum was offended by these repeated sexually explicit and unwanted remarks and reported to Mr. Lomita that Mr. Correri had made the same remark to her before walking into his office.

36. Mr. Lomita laughed at the comment and continued his business-related discussion with Mr. Correri and Ms. Nusbaum.

37. Mr. Lomita did not undertake any action to address Mr. Correri's behavior.

38. Shortly after the meeting concluded, Ms. Nusbaum returned to Mr. Lomita's office and complained about Mr. Correri's remarks and Mr. Lomita's acquiescence to and approval of such behavior.

39. Mr. Lomita responded dismissively, "C'mon Jan, you know John." Mr. Lomita further suggested that she confront Mr. Correri herself about his remarks.

40. Ms. Nusbaum then approached Mr. Correri and notified him that his conduct made her "uncomfortable." Mr. Correri responded by repeating his harassing comment: "Well, you should suck my dick if I sell the dresses."

41. Mr. Correri's sexually harassing conduct toward Ms. Nusbaum was unwelcome, degrading, and interfered with her work environment.

Defendants Retaliated Against Ms. Nusbaum Based on Her Protected Conduct

42. Despite Ms. Nusbaum's strong performance record and strong relationships with retailers, Mr. Lomita immediately began retaliating against Ms. Nusbaum for her protected complaints by subjecting her to heightened job scrutiny and unwarranted discipline.

43. The day after Ms. Nusbaum protested Mr. Correri's sexually harassing comments, Mr. Lomita criticized Ms. Nusbaum for failing to make a large sale like one Mr. Correri had purportedly made to TJ Maxx. This criticism was unwarranted, particularly as Mr. Correri's

order turned out to be fake.

44. On October 19, 2016, a little more than two weeks after Ms. Nusbaum complained about Mr. Correri's sexually harassing behavior, Mr. Lomita removed Ms. Nusbaum off the Nanette Lepore brand and offered her a demotion to a less desirable position. When Ms. Nusbaum protested this retaliatory transfer and attempted to negotiate better employment terms, Mr. Lomita became hostile and responded, "Are you fucking kidding me? I'm offering you a job to stay employed, and you came up with a laundry list!" Mr. Lomita then demanded that Ms. Nusbaum leave his office.

45. Two days later, on October 21, 2016, E-Lo terminated Ms. Nusbaum's employment. The Company also refused to pay her contractually-owed severance pay of nine months' salary.

46. Even after terminating Ms. Nusbaum's employment, upon information and belief, Mr. Lomita has and continues to interfere with Ms. Nusbaum's prospective economic relationships with potential new employers. Upon information and belief, Mr. Lomita knew of Ms. Nusbaum's prospective new economic relationships with several prospective new employers and intentionally interfered with such relationships, as a means of retaliation and acting solely out of malice and/or using dishonest, unfair or improper means.

47. On information and belief, Mr. Lomita made false and disparaging statements to Ms. Nusbaum's prospective employers regarding Ms. Nusbaum's performance record and termination from E-Lo which has caused and continues to cause Ms. Nusbaum to lose job opportunities.

48. As a direct result of the unlawful conduct described above, Ms. Nusbaum has, and continues to suffer damages, including, but not limited to, lost past and future income, benefits,

humiliation, embarrassment, emotional and physical distress, and mental anguish.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
Gender Discrimination
Sexual Harassment and Hostile Work Environment
(New York City Human Rights Law, N.Y.C. Admin. Code § 8-101 *et seq.*)

49. Ms. Nusbaum incorporates by reference the allegations contained in the previous paragraphs of the Complaint as if fully rewritten herein.

50. Defendant violated the NYCHRL when it treated Ms. Nusbaum less well on the basis of her gender, subjected her to sexual harassment and a hostile work environment, and failed to correct a hostile work environment of which it was aware.

51. Defendant knew or should have known that its actions constituted sexual harassment and a hostile work environment and showed willful and/or reckless disregard for Ms. Nusbaum's statutorily protected rights.

52. Ms. Nusbaum is entitled to damages including, but not limited to past and future lost wages and benefits, damages to compensate her for past and future physical and emotional distress, punitive damages, reasonable attorneys' fees and costs of this action, and pre-judgment interest.

SECOND CLAIM FOR RELIEF
Retaliation
(New York City Human Rights Law, N.Y.C. Admin. Code § 8-101 *et seq.*)

53. Ms. Nusbaum incorporates by reference the allegations contained in the previous paragraphs of the Complaint as if fully rewritten herein.

54. Ms. Nusbaum engaged in protected activities under the NYCHRL, including making internal complaints of sexual harassment and opposing gender discrimination.

55. Defendant violated the NYCHRL when it treated Ms. Nusbaum less well because of her protected complaints of sexual harassment and opposing gender discrimination.

56. Defendant knew or should have known that its actions constituted unlawful retaliation and showed willful and/or reckless disregard for Ms. Nusbaum's statutorily protected rights.

57. Ms. Nusbaum is entitled to damages including, but not limited to past and future lost wages and benefits, damages to compensate her for past and future physical and emotional distress, punitive damages, reasonable attorneys' fees and costs of this action, and pre-judgment interest.

THIRD CLAIM FOR RELIEF
Sex Discrimination
Sexual Harassment and Hostile Work Environment
(Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et. seq.*)

58. Ms. Nusbaum incorporates by reference the allegations contained in the previous paragraphs of the Complaint as if fully rewritten herein.

55. Defendant violated Title VII when it subjected Ms. Nusbaum to unlawful sex discrimination, including sexual harassment and a hostile work environment that altered Ms. Nusbaum's working conditions. E-Lo failed to take immediate and appropriate corrective action despite knowledge of the sexual harassment and hostile work environment.

56. Defendant knew or should have known that its actions constituted unlawful sex discrimination, including sexual harassment and hostile work environment, and showed willful and/or reckless disregard for Ms. Nusbaum's statutorily protected rights.

57. As a direct result of Defendant's discriminatory acts, Ms. Nusbaum is entitled to damages including, but not limited to past and future lost wages and benefits, damages to compensate her for past and future physical and emotional distress, punitive damages, reasonable attorneys' fees and costs of this action, and pre-judgment interest.

FOURTH CLAIM FOR RELIEF
Retaliation
(Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et. seq.*)

59. Ms. Nusbaum incorporates by reference the allegations contained in the previous paragraphs of the Complaint as if fully rewritten herein.

60. Ms. Nusbaum engaged in protected activities under Title VII, including making internal complaints of sexual harassment and opposing gender discrimination.

62. Defendant violated Title VII when it took adverse actions against Ms. Nusbaum with the purpose of retaliating against her because of her participation in protected activities and opposition to sex discrimination, including sexual harassment and hostile work environment.

63. Defendant knew or should have known that its actions constituted unlawful retaliation and showed willful and/or reckless disregard for Ms. Nusbaum's statutorily protected rights.

64. As a direct result of Defendant's retaliatory acts, Ms. Nusbaum is entitled to damages including, but not limited to past and future lost wages and benefits, damages to compensate her for past and future physical and emotional distress, punitive damages, reasonable attorneys' fees and costs of this action, and pre-judgment interest.

FIFTH CLAIM FOR RELIEF
Breach of Contract

65. Ms. Nusbaum incorporates by reference the allegations contained in the previous paragraphs of the Complaint as if fully rewritten herein.

66. Ms. Nusbaum and Defendant entered into a binding contract supported by adequate consideration, which obligated Defendant to pay Ms. Nusbaum nine months' salary as severance upon the termination of her employment.

67. Defendant materially breached the contract by refusing to pay Ms. Nusbaum the contractually-owed severance she was due upon the termination of her employment.

68. As a direct result of Defendant's breach of contract, Ms. Nusbaum is entitled to damages equal to nine months' salary and pre-judgment interest.

SIXTH CLAIM FOR RELIEF
(In the Alternative)
Promissory Estoppel

69. Ms. Nusbaum incorporates by reference the allegations contained in the previous paragraphs of the Complaint as if fully rewritten herein.

70. Defendant promised to pay Ms. Nusbaum nine months' salary as severance in the event that the Company terminated Ms. Nusbaum's employment, and Ms. Nusbaum relied on this promise to her detriment by undertaking employment she would not have otherwise undertaken and foregoing other employment opportunities.

71. As a direct result of Defendant's actions, Ms. Nusbaum is entitled to damages equal to nine months' salary and pre-judgment interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter a judgment:

A. Declaring that the acts, practices, and omissions complained of herein are unlawful and violate the NYCHRL, Title VII, and state common law;

B. Directing Defendant to pay Ms. Nusbaum her back pay, compensatory damages, and pre-judgment interest for violations of Title VII and the NYCHRL;

C. Directing Defendant to reinstate Ms. Nusbaum or, in the alternative, pay front pay;

D. Directing Defendant to pay Ms. Nusbaum her damages for violation of state common law;

E. Directing Defendant to pay exemplary and punitive damages sufficient to punish and deter continuation of Defendant's unlawful employment practices;

F. Awarding Ms. Nusbaum reasonable attorneys' fees and costs pursuant to 29 U.S.C. § 2617(a)(3) and N.Y.C. Admin. Code § 8-502; and

G. Awarding such other legal and equitable relief as this Court deems necessary, just, and proper.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Ms. Nusbaum demands a trial by jury on all questions of fact raised by this complaint.

Dated: New York, New York
May 15, 2017

Respectfully submitted,

/s/ *Cara E. Greene*
Cara E. Greene

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